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August 15, 2013

VIA ELECTRONIC & US MAIL

Ms. Stephanie Vaughn
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, New York 10007

**Re: Monthly Progress Report No. 75 – July 2013
Lower Passaic River Study Area (LPRSA)
Remedial Investigation/ Feasibility Study (RI/FS)
CERCLA Docket No. 02-2007-2009**

Dear Ms. Vaughn:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on the behalf of the RI/FS Agreement Settling Parties (Cooperative Parties Group or CPG) pursuant to the Administrative Settlement Agreement and Order on Consent (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 42 of said Settlement Agreement.

(a) Actions which have been taken to comply with this Settlement Agreement during the previous month.

Meetings/Conference Calls

- None.

Correspondence

- On July 12, CPG and EPA exchanged e-mails regarding status of Chemical Water Column Monitoring (CWCM) events conducted during June.
- On July 15, CPG submitted a Non-Nonconformance Report associated with the High Volume (HV) CWCM Event #2 sampling locations in Newark Bay.
- On July 15, CPG submitted the June Monthly Progress Report to EPA.

Work

- CPG completed chemical analysis of Small Volume (SV) CWCM High Flow (HF) Event #2 samples.
- CPG initiated data validation on the SV CWCM HF Event #2 data.
- CPG continued chemical analysis of HV CWCM Event #2 samples.

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- CPG completed validation of data from the Background Tissue Survey.
- CPG continued development of the background and reference site example outline requested by EPA.
- CPG continued drafting a data report for the Dissolved Oxygen (DO) Monitoring Survey.
- CPG continued drafting a data report for the results of the upstream sediment chemistry testing associated with the Benthic Background Sediment Survey.
- CPG continued drafting a data report for the results of the upstream taxonomy enumeration associated with the Benthic Background Sediment Survey.
- CPG continued development of a preliminary Conceptual Site Model (CSM) deliverable.
- CPG continued early baseline risk assessment activities (update CSM, benthic and wildlife assessments).
- CPG Modeling Team continued work on the RCATOX Chemical Fate and Transport Model Code initial conditions and long-term calibration runs.
- CPG Modeling Team continued work on system understanding for hydrodynamic and sediment transport processes in Newark Bay.
- CPG continued review of sediment characteristics and potential target remedy locations in support of initial Feasibility Study (FS) evaluations.

(b) Results of Sampling and Tests

- On July 15, all validated data from the SV CWCM HF Event #1 was posted to the EPA SharePoint Site.
- On July 19, all validated data from the HV CWCM Event #1 was posted to the EPA SharePoint Site.
- On July 22, CPG submitted validated data from the Background Tissue Survey to EPA.

(c) Work planned for the next two months with schedules relating to the overall project schedule for RI/FS completion

- CPG will continue chemical analysis of the samples from the HV CWCM Event #2.
- CPG will initiate data validation of the HV CWCM Event #2 data.
- CPG will continue data validation of the SV CWCM HF Event #2 data.
- CPG will continue planning activities to conduct a second Supplemental Sampling Program (SSP 2).
- CPG will conduct SSP 2 field activities, pending approval by the EPA of the QAPP Addendum.
- CPG will continue drafting a data report for the DO Monitoring Survey.
- CPG will continue validation of data from the Background Tissue Survey.

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- CPG will continue drafting a data report for the results of the upstream sediment chemistry testing associated with the Benthic Background Sediment Survey.
- CPG will continue drafting a data report for the results of the upstream toxicity testing associated with the Benthic Background Sediment Survey.
- CPG will continue drafting a data report for the results of the upstream taxonomy enumeration associated with the Benthic Background Sediment Survey.
- CPG will continue drafting the Preliminary CSM Report.
- CPG will continue early baseline risk assessment activities (update CSM, benthic and wildlife assessments).
- CPG Modeling Team will continue calibration runs with the HQI ECOM-SEDZLJS and RCATOX codes and inputs.
- CPG Modeling Team will continue to support the CWCM program data evaluation.
- CPG will participate in LPR/Newark Bay Modeling Program progress calls and follow-up modeling collaboration meetings with EPA and EPA consultants.
- CPG will continue initial FS evaluation of targeted remedy locations.
- CPG observed the second sample collection from the Clay Street CSO by Tierra.

(d) Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays.

- Based upon discussions with Region 2, the CPG understood that Region 2 considered the calibration of the HQI sediment transport and the chemical fate and transport model sufficient to support the revised FFS for the lower 8 miles of the LPRSA in the fall of 2012. Furthermore, the CPG understands that Region 2 received comments related to the FFS model both from the NRRB review conducted in December 2012 and the model peer review in February and March 2013. The CPG has requested that Region 2 provide the results of both the NRRB review and model peer review especially the comments that may be pertinent to the CPG's LPR/NB model development and is awaiting Region 2's decision on releasing the comments. Finally, the CPG understands that it may require up to six months for Region 2's Modeling Team to incorporate, calibrate and re-run the model based on the NRRB and peer review comments received by Region 2 through the spring of 2013. To date, Region 2 has declined the CPG's requests to provide model-related comments from either review. The CPG is continuing to work on both sediment transport model and the chemical fate and transport model for the LPRSA and incorporating the improvements and other changes that CPG has discussed with Region 2. Region 2 and CPG collaboration meetings were conducted throughout 2012 and in February 2013; this most recent and previous meetings are providing an opportunity for both modeling teams to understand differences between each team's approaches. The CPG provided a detailed technical memorandum on its progress on the LPR/NB sediment transport modeling in January to Region 2 as well as providing current code and input and output files which was discussed on February

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28. EPA provided Newark Bay SedFlume data and FFS Model input files in March. Delays associated with both the sediment transport modeling and chemical fate transport modeling schedules are extending the completion of the LPRSA RI/FS. As a result of the July 24 meeting with EPA HQ and Region 2, the CPG will be developing a meeting schedule to address outstanding issues with the LPR/NB models related to sediment transport, chemical fate and transport and bioaccumulation to occur during the third and fourth quarters of CY 2013.
- The CPG understands that the Region 2 approved TMO's CSO/SWO Workplan in May 2011. It is also the CPG's understanding that the Method Detection Studies proposed by TMO and other work such as construction of the proposed mobile centrifuge/CSO sampling trailer required for Phase 1 work were completed in late August 2012. It is also CPG's understanding that the EPA and TMO had agreed in late 2012 to delay the Phase I CSO sampling due to the failure of the PVSC treatment system and other regional POTWs. Furthermore, the CPG understands that delays to CSO Phase 1 sampling were caused by TMO inability to receive permission for the discharge of CSO effluent from its trailer back to the CSO from initially PVSC and then municipalities. Finally, TMO did not complete the Phase 1 CSO Sampling in May 2013 as outlined in its latest schedule submitted to Region 2. TMO did collect an initial sample from the Clay Street CSO on June 10 which CPG has identified a number concerns that it plans to share with EPA. Additionally, the CPG understands that the municipal access issues are unresolved and will further delay completion of Phase 1. The extent of the LPRSA RI/FS schedule impacts associated with the ongoing delays in the Phase 1 sampling schedule is significant. Moreover, there are likely to be significant delays of the Phase 2 CSO field schedule that will prevent a timely completion of the TMO CSO Study and adversely impact the timely completion of the LPRSA RI/FS. Specifically TMO's CSO Study schedule included in an approved CSO Study QAPP amendment. The revised CSO Study schedule indicates that validated data from Phase 2 will be available in late 2015 date which is one year after the anticipated Draft RI report submission in 2014 and FS submission in 2015. TMO's CSO schedule is an unacceptable delay to the LPRSA RI/FS schedule as demonstrated by their inability to complete the Phase 1 work this spring and summer. Furthermore, TMO's is unable to conduct the work consistent with the EPA-approved QAPP or seek EPA's consultation as demonstrated during the June 10, 2013 sampling event at Clay Street and calls into question the reliability and value of these data. The CPG detailed these issues and other concerns regarding TMO's CSO Study in its July 5, 2013 letter to Region 2. The CPG is evaluating alternative approaches for CSO/SWO data to be used in the LPR/NB Chemical Fate & Transport Model to maintain a LPRSA RI/FS Study completion date of first quarter 2015.
 - Region 2 provided comments on July 11, 2011 which disapproved the revised risk assessment planning documents and required submission of revised documents within 30 days. Additionally, Region 2 provided a technical memo on July 25, 2011

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on fish and crab consumption rates for the LPRSA Human Health Risk Assessment. The CPG filed a notice of dispute resolution in accordance with Section XV of the AOC on July 25, 2011 in response to Region's July 11, 2011 directive letter and July 25, 2011 technical memorandum. The revised RARC and TRV deliverables were submitted on August 9, 2011. On September 6, 2011 the CPG submitted a position paper in response to EPA's July 11, 2011 comments and July 25, 2011 technical memorandum. Dispute resolution meetings were held on December 1, 2011 and January 13, 2012. Region 2 provided the results of the dispute resolution to the CPG on February 7, 2012 and the CPG implemented the changes specified in the July 2011 directive comments and the results of the dispute resolution in the revised RARC which was submitted on April 13, 2012. Region 2 provided comments on the revised RARC on August 30, 2012; the CPG met with Region 2 on January 7, 2013 to discuss remaining background and reference issues and had a telephone call with EPA on January 28 to discuss cooking loss.

Since early in 2013, Region 2 has promised to provide revised definitions for background and reference that the CPG can include in the revised RARC. These definitions were received by the CPG on June 28. It is the CPG's understanding that the issuance of the revised definitions was held-up by the NJDEP, NOAA and US FWS which did not accept definitions that are otherwise acceptable to the Region and the USACE, and which appear to be acceptable to the CPG based on the CPG's understanding of the revised definitions. The CPG will review the June 28 definitions and determine if they are consistent with the CPG's previous understanding based on its discussions with the Region. If they are not then the CPG reserves its rights under the AOC. Following CPG review and discussions and clarifications with the Region, the CPG is prepared to resubmit the revised final RARC later this summer to Region 2 for final approval under the presumption that the revised definitions are consistent with the CPG's previous discussions with the Region.

- The CPG was directed in 2009 by EPA to develop a single QAPP for surface water sampling for both the LPRSA and NBSA. At that time, the TMO parties were still a member of the CPG as well as the respondents to the NBSA AOC; the TMO parties left the CPG in May 2012. The CPG followed the direction of the EPA at that time and subsequently through three separate programs and developed QAPPs for the Physical Water Column Monitoring and Small Volume and High Volume Chemical Water Column Monitoring programs (in fact the High Volume program was implemented after TMOs departure); the CPG did voice its concerns to EPA that this involved both (1) different operable units of the Diamond Alkali NPL site and (2) different respondents to the respective AOCs – EPA did not address the CPG's concerns. Tierra stopped responding to the CPG's contractor task authorization requests starting in March 2013 and has not made a payment of their invoices since mid-May. At this time, the CPG's contractor is owed over \$1 MM in outstanding invoices and an estimated \$1.5 MM in labor and expenses associated with NBSA

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sampling (for a total of \$2.5 MM). Until these invoices are paid, the CPG contractor has indicated that they may not provide the NBSA data to the CPG or any other party. If EPA requires these data to be included in the LPR/NB Model as planned and the invoices are not paid then the schedules to complete the LPRSA RI/FS and the LPR/NB Model could be adversely impacted. The CPG has detailed this situation and its proposed solution in its August 6 letter to EPA.

If you have any questions, please contact me or Rob Law at (908) 735-9315.

Very truly yours,

de maximis, inc.

Willard F. Potter / cfc

Willard F. Potter
Project Coordinator

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